

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KWAME GAINES,

Plaintiff

v.

GUERRA UNIT 9 C/O NIGHT SHIFT, et al.,

Defendants

Case No.: 2:23-cv-01970-APG-DJA

Order

Plaintiff Kwame Gaines brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Clark County Detention Center. ECF No. 1-1. On December 12, 2023, the magistrate judge ordered Gaines to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before February 9, 2024. ECF No. 4. The magistrate judge warned Gaines that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 3. That deadline expired and Gaines did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond. Furthermore, the magistrate judge's order came back as undeliverable to the address that Gaines provided.

I. Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply

1 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*
2 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
3 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)
4 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
5 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
6 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
7 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*,
8 833 F.2d at 130).

9 The first two factors, the public's interest in expeditiously resolving this litigation and the
10 court's interest in managing its docket, weigh in favor of dismissal of Gaines's claims. The third
11 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
12 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
13 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
14 fourth factor—the public policy favoring disposition of cases on their merits—is greatly
15 outweighed by the factors favoring dismissal.

16 The fifth factor requires me to consider whether less drastic alternatives can be used to
17 correct the party's failure that brought about the court's need to consider dismissal. *See Yourish*
18 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
19 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
20 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not exhaust every
21 sanction short of dismissal before finally dismissing a case, but must explore possible and
22 meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because
23 this action cannot realistically proceed until and unless Gaines either files a fully complete

1 application to proceed *in forma pauperis* or pays the \$402 filing fee for a civil action, the only
2 alternative is to enter a second order setting another deadline. But the reality of repeating an
3 ignored order is that it often only delays the inevitable and squanders the court's finite resources.
4 The circumstances here do not indicate that this case will be an exception: the court's previous
5 order came back as undeliverable to the address that Gaines provided, and there is no reason to
6 believe that he would even receive an order setting another deadline. Setting another deadline is
7 not a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

8 **II. Conclusion**

9 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
10 dismissal. It is therefore ordered that this action is dismissed without prejudice based on Gaines's
11 failure to file a fully complete application to proceed *in forma pauperis* or pay the full \$402
12 filing fee in compliance with the magistrate judge's December 12, 2023, order. The Clerk of
13 Court is directed to enter judgment accordingly and close this case. No other documents may be
14 filed in this now-closed case. If Gaines wishes to pursue his claims, he must file a complaint in a
15 new case.

16 Dated: February 20, 2024



U.S. District Judge